



AF

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of:

Confirmation No. 2877

Alan NEWMAN et al.

Group Art Unit No.: 2124

Serial No.: 09/407,531

Examiner: John Q. CHAVIS

Filed: September 28, 1999

For: A METHOD AND SYSTEM FOR A SOFTWARE RELEASE PROCESS

REPLY BRIEF UNDER 37 CFR § 1.193(b)(1)

Hon. Commissioner of Patents
P. O. Box 1450
Mail Stop: Appeal Briefs - Patents
Alexandria, VA 22313-1450

Sir:

This is in response to the Examiner's Answer mailed July 14, 2004, the shortened statutory period for which runs until September 14, 2004.

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REMARKS

GROUP 1 (Claims 1, 2, and 8)

In the Examiner's Answer, the Examiner contends that U.S. Patent No. 6,223,343 to Hopwood et al. ("Hopwood") discloses that a support platform 26 loads new programs and operating systems for an entire system and that developer platform 30 distributes the developed and tested programs/elements to the necessary components of the system. Appellants concede that Hopwood discloses (a) a support platform 26 that is used to load new programs and operating systems to evaluate the use of those new programs and operating systems within a computer system, and (b) a developer platform 30 that receives "element changes" and transmits the changes to a post-issuance component 36 for distribution to other systems (col. 5, lines 4-25).

However, there is no teaching or suggestion in Hopwood that the "new programs and operating systems" that are loaded on support platform 26 are in any way the same as or part of the "elements" whose changes are received by developer platform 30 and distributed to post-issuance component 36. Without providing any reasoning for doing so, the Examiner is mixing together two distinct and separate entities—the entities loaded in support platform 26 and the entities transmitted by developer platform 30—in an attempt to come up with something that reads on the limitation of Claim 1, "providing an early development branch . . . that is designated for incorporation of one or more software modules providing support for new features and platforms." Hopwood simply does not disclose facts sufficient to support the Examiner's inference that the two distinct and separate entities are the same.

Even if the "new programs and operating systems" are assumed to be "software modules providing support for new features and platforms," Hopwood does not teach or suggest that the "new programs and operating systems" are ever incorporated into an early development branch—even if developer platform 30 is assumed to be such an early development branch. Conversely, even if the "element changes" are incorporated into an

“early development branch,” by virtue of their being received by developer platform 30 prior to being distributed to post-issuance component 36, Hopwood does not teach or suggest that the “element changes” provide “support for new features and platforms.”

The Examiner’s Answer points out that Hopwood’s Claim 49 discloses “merging changes in two revisions” (col. 34, line 56). Again, though, the Examiner has not cited any portion of Hopwood that teaches or suggests that such changes provide “support for new features and platforms.” The “changes” recited in Hopwood’s Claim 49 appear to be the “element changes” discussed above, which, even if merged at some point, do not appear to provide “support for new features and platforms.”

The Examiner’s Answer also alleges that a “new operating system” is the same as a “new platform.” The Appellants have never contended otherwise. However, even if a “new operating system” is a “new platform,” Hopwood still fails to teach or suggest at least the limitation of Claim 1 cited above, because Hopwood does not teach or suggest that the “element changes” provide support for new operating systems.

The Examiner’s Answer asserts that the Appellants have argued that Hopwood’s RMS does not provide support for new platforms. As seen in the Appeal Brief, Appellants actually argued that Hopwood’s RMS does not manage changes to software modules that provide support for new platforms (page 10, paragraph 2), and that the elements managed by Hopwood’s RMS do not provide support for new platforms (page 10, paragraph 4). The Examiner notes that Hopwood’s invention allows for the creation of a copy of an element, and for the management of changes made to files on several platforms (col. 11, lines 1-12). However, even taking this into consideration the fact that Hopwood’s invention manages changes to files that may be stored on several platforms, it does not follow that the files themselves provide support for new platforms, or even different but “old” platforms. For example, a first file may be stored on a first platform and a second file may be stored on a second platform. From these facts alone, nothing can be inferred about which platform the first file supports, or which platform the second

file supports. The platform upon which a file is stored has no bearing upon which platforms the file supports.

GROUP 2 (Claims 3, 9, and 19-31)

The Examiner argues that, because Hopwood discloses that copies of elements can be created at any point in a development history (col. 11, lines 1-12), it follows that sub-repository 106 contains pre-tested software modules rather than just metadata about software modules. There does not appear to be any logical or rational basis for this argument. “At any point” in Hopwood’s context means “at any time” rather than “at any module.” Sub-repository 106 contains only metadata, and not pre-tested software modules, even if copies of elements can be created at any point (time) in a development history. Because sub-repository 106 does not receive pre-tested software modules, and because the pre-integration branch recited in Claim 3 is required to receive pre-tested software modules, sub-repository 106 cannot be the pre-integration branch recited in Claim 3.

The Examiner also argues that col. 15, lines 14-26 and 42-52, indicate that sub-repository 106 can contain applications in addition to metadata. However, lines 14-26 merely disclose that a developer 104 can access, update, and modify sub-repository 106, either directly or via coordination of RMS 50. These lines say nothing about the content of sub-repository 106.

Lines 42-52 state that sub-repository 106 contains information that is a subset of repository 100, and that repository 100 contains **information about** businesses and applications; that is, application and business **metadata**. The Examiner apparently believes that the words “information about” and “metadata” only operate on the word “business” in this text, and not on the word “application.” Appellants disagree. The words “information about” and “metadata” in this text operate on both the words “business” and “application.” Therefore, the phrase “information about the business and

the applications” is properly understood to mean “information about the business and information about the applications,” and the phrase “application and business metadata” is properly understood to mean “application metadata and business metadata.” Both repository 100 and sub-repository 106 contain metadata about software, but neither contains the software per se.

GROUP 3 (Claims 14-15)

The Examiner states, “Therefore, Hopwood’s release decisions are considered to provide for a realistic issue that provides for the feature of .” Appellants are unable to respond to this statement, because the statement is an incomplete sentence that is incomprehensible.

The Examiner notes that Claims 14 and 15 do not recite that the selected features may be completely untested. Appellant agrees that Claims 14 and 15 do not expressly recite that the selected features may be completely untested. Nevertheless, Appellant maintains that Hopwood does not disclose the selection of features based on a scheduled release date (in contrast to the selection of a release date based on which features are ready to be released).

Claim 14 recites, in part, “selecting one or more features for inclusion in a new release of the software system code base, wherein a quantity of features selected will allow a next scheduled release of the software system code base to be completed at a required time.” Thus, Claim 14 requires that the quantity of selected features be based on the time at which the next software release is scheduled. This is the complete inverse of systems in which software is not released until a predetermined number of features are ready for release.

The Examiner’s Answer cites portions of Hopwood that indicate that testing is performed, but none of these portions discloses or is even alleged to disclose that a

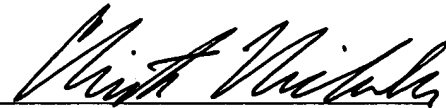
quantity of features selected is based on the time at which the next software release is scheduled, as required by Claims 14 and 15.

CONCLUSION

The Examiner has not expressed any valid argument to contradict the Appellants' assertions in the Appeal Brief. Therefore, Appellants respectfully submit that the imposed rejections are **not** viable, and respectfully solicit the Honorable Board to **reverse** each of the imposed rejections.

Respectfully submitted,

HICKMAN PALERMO TRUONG & BECKER LLP



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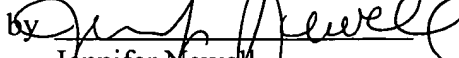
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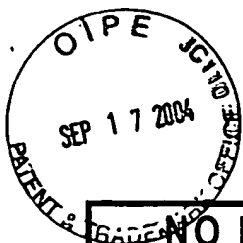
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on September 14, 2004

by 
Jennifer Newell



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		Application Number	09/407,531
		Filing Date	September 28, 1999
		First Named Inventor	Alan Newman
		Examiner Name	John Q. Chavis
TOTAL AMOUNT OF PAYMENT		(\$)	0.00
		Attorney Docket No.	50325-0543

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METHOD OF PAYMENT (check one)		FEE CALCULATION (continued)			
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2. <input type="checkbox"/> Payment Enclosed: <input type="checkbox"/> Check <input type="checkbox"/> Money Order <input type="checkbox"/> Other					
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FEE CALCULATION					
1. BASIC FILING FEE					
Large Entity Fee Code	Large Entity Fee (\$)	Small Entity Fee Code	Small Entity Fee (\$)	Fee Description	Fee Paid
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
SUBTOTAL (1)					(\$) 0.00
2. EXTRA CLAIM FEES					
Total Claims	Highest Paid Claims	Extra Claims	Fee from Below	Fee Paid	
20	-20	0	18.00	=	0.00
Independent Claims	4	0	86.00	=	0.00
Multiple Dependent					
**or number previously paid, if greater; For Reissues, see below					
Large Entity Fee Code	Large Entity Fee (\$)	Small Entity Fee Code	Small Entity Fee (\$)	Fee Description	
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	**Reissue independent claims over original patent	
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